

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Implementation of Section 304 of the	)	
Telecommunications Act of 1996	)	CS Docket No. 97-80
	)	
Commercial Availability of	)	
Navigation Devices	)	

**REPLY COMMENTS OF AMERITECH**

Ameritech New Media, Inc. ("Ameritech"), hereby replies to the comments filed on September 23, 1998, concerning the petitions for reconsideration of the Commission's Report and Order ("Order") in the above-captioned proceeding.<sup>1</sup>

Ameritech is filing these Reply Comments to respond specifically to the suggestion by members of the consumer electronics industry that the Commission's mandate in this proceeding is to create a competitive market for navigation devices, regardless of the burdens imposed on cable operators. Such comments obscure Congress's overarching mandate to the Commission in Title VI of the Communications Act to promote competition in cable communications.<sup>2</sup> More specifically, the comments ignore the disproportionate impact of the Commission's Order on alternative multi-channel video programming distributors ("MVPDs"), such as Ameritech, which are attempting to bring meaningful competition to the incumbent cable industry.

<sup>1</sup>Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, CS Docket. No. 97-80, Report and Order, FCC 98-116 (rel. June 24, 1998) ("Order").

<sup>2</sup> Section 601(6) obligates the Commission to ensure that its policies concerning cable communications "promote competition" and "minimize unnecessary regulation that would impose an undue economic burden on cable systems." 47 U.S.C. § 521(6).

In particular, Ameritech objects to the contention of the Consumer Electronics Manufacturers Association ("CEMA")<sup>3</sup> and Circuit City Stores, Inc. ("Circuit City")<sup>4</sup> that the Commission's prohibition on the provision of new integrated set-top boxes by cable operators and other MVPDs after January 1, 2005,<sup>5</sup> is necessary to create a competitive market. Such is not the case. Indeed, the Commission's decision to prohibit the sale or lease of new integrated set-top boxes by cable operators and other MVPDs after January 1, 2005 actually limits consumer choice and competition. The ban on integrated devices will likely have a chilling effect on the on-going development and deployment of new technologies and services, particularly by new entrants, like Ameritech, which are introducing differentiated products and services as a means of attracting new customers. Such innovation is essential to promote vigorous competition in the MVPD marketplace and to ensure that consumers have a real choice in service providers and multi-channel video services.<sup>6</sup>

The ban on integrated devices will also limit the ability of new entrants to compete effectively in the market for multichannel video programming by disproportionately increasing their cost of doing business. New entrants, like Ameritech, must deploy a larger number of new, integrated boxes, as a percentage of their subscriber

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<sup>3</sup> Comments of CEMA, CS Docket No. 97-80, filed Sept. 23, 1998, at 5.

<sup>4</sup> Comments of Circuit City, CS Docket No. 97-80, filed Sept. 23, 1998, at 3.

<sup>5</sup> CEMA and Circuit City advocate accelerating the phase-out deadline for integrated devices to July 1, 2000. Ameritech opposes acceleration of the deadline which would only exacerbate compliance burdens for all MVPDs.

<sup>6</sup> See Partial Opposition to Petition for Reconsideration, The Wireless Communications Assn. Int'l, Inc. ("WCA"), CS Docket No. 97-80, filed Sept. 23, 1998, at 4 (explaining that, in the nascent competitive MVPD marketplace, alternative MVPDs have "every incentive" to make equipment available for sale on

base, than slower-growing, incumbent MVPDs, and are less likely to have fully depreciated their existing inventory of set-top boxes by 2005. Consequently, new entrants are likely to have significantly higher stranded equipment costs, as a percentage of overall business costs, than incumbent MVPDs if the Commission implements the ban on integrated devices. And, plainly, as the cost of market entry increases, competition in the MVPD marketplace will diminish.

Contrary to the arguments of Circuit City and CEMA, Commission precedent does not support the phase-out of integrated devices.<sup>7</sup> In the first place, the Commission's "No-Bundling Rule" does not prohibit local exchange carriers from offering innovative equipment to consumers in addition to local exchange service. Nor does it establish specific equipment design specifications that must be met before a carrier may offer CPE to customers. Rather, it simply provides that carriers may not charge a combined price for services and equipment.<sup>8</sup> In contrast, the Commission's ban on the provision of integrated set-top boxes actually mandates design specifications (by requiring MVPDs to separate security from non-security functions) for navigation devices provided by MVPDs, which not only exceeds the Commission's authority under Section 629, but also is inconsistent with its obligation under Section 601(c) to promote competition in the MVPD marketplace.

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reasonable terms and conditions since the penalty for failing to do so is to risk loss of a subscriber to a competitor).


<sup>7</sup> See Circuit City at 7-9; CEMA at 11-12.

<sup>8</sup> See 47 C.F.R. § 64.702(e). Ameritech notes that Circuit City's and CEMA's citation to the "No-Bundling Rule" is completely beside the point because section 629 permits "multichannel video programming distributors" to offer navigational devices to consumers "if the system operator's charges for such devices and equipment are separately stated and not subsidized by charges for any [of the MVPD's programming or other] services." 47 U.S.C. § 549(a).

Accordingly, in addressing the issues raised in the petitions for reconsideration the Commission, under Title VI, must consider the impact of its commercial availability rules on the MVPD marketplace generally in addition to facilitating competition in the navigation device market.<sup>9</sup> Ameritech firmly believes that the Commission lacks the statutory authority to impose a ban on the sale or lease of new integrated devices by MVPDs. If the Commission nonetheless concludes that it has authority to ban integrated devices, it should clarify that the January 1, 2005, security separation deadline will not apply to integrated boxes purchased prior that date, or carve out a narrow exemption from the deadline for new entrants.<sup>10</sup>

For the reasons set forth above, and in its earlier-filed Comments, the Commission should grant reconsideration of its Order and clarify its navigation device rules consistent with Ameritech's recommendations.

Respectfully submitted,

  
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<sup>9</sup> Ameritech notes that a broad cross-section of parties, including Circuit City (at 17) and General Instruments (at 2-7), support the exemption of analog devices from the security separation requirement on statutory grounds and on the basis that the rule is "overly harsh" in its treatment of MVPDs. These parties concur with Ameritech that to ensure that its rules do not overly burden MVPDs, the Commission should exempt analog devices from the security separation requirement.

<sup>10</sup> Circuit City (at note 46) appears to agree that the Commission should interpret its phase-out rule "flexibly" to alleviate concerns for devices placed into inventory but not into service, or which have been in service but presently are in inventory.

CERTIFICATE OF SERVICE

I, Anisa A. Latif, do hereby certify that a copy of the Reply Comments of Ameritech has been served on the parties attached via US mail – postage prepaid, on this 7<sup>th</sup> day of October 1998.

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